

ANADARKO PRODUCTION CO.

IBLA 86-121

Decided April 7, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, segregating noncompetitive oil and gas leases W-87881 and W-96448.

Reversed and remanded.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

Where a lease committed in part to a unit agreement is extended by reason of production at the time of commitment, the segregated nonunitized lease is extended for the life of such production but not less than 2 years from the date of segregation pursuant to sec. 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1982).

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Anadarko Production Company (Anadarko) appeals from a September 27, 1985, decision of the Wyoming State Office, Bureau of Land Management (BLM).

The BLM decision held (1) that 80 acres of land in oil and gas lease W-87881 had been committed to the Satori Unit Agreement (No. WYO69P56-85U963) effective July 31, 1985, and (2) that the balance of the land in the lease had been segregated into lease W-96448, which will remain in effect until July 31, 1987, and so long thereafter as oil or gas is produced in paying quantities, citing the regulation at 43 CFR 3107.3-2.

In its statement of reasons for appeal, Anadarko contends that lease W-87881 was already in its extended term by virtue of production. Hence, appellant argues the term of lease W-96448 should be coextensive with the term of that lease, i.e., so long as oil or gas is produced in paying quantities but not less than 2 years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities on the nonunitized lease.

The facts underlying this appeal are straightforward. The lands embraced in lease W-96448 were originally included in lease W-17954, which issued effective May 1, 1969. A portion of the land in lease W-17954 was committed to the Powell II Unit effective November 29, 1974, and the lands outside the unit were segregated into nonunitized lease W-48869. Since this segregation occurred within the primary term of lease W-17954, the term of lease W-48869 remained the same as that of its parent lease, W-17954 (through April 30, 1979).

In 1977, the USA-Dilts #31-1 Well was drilled in the NE 1/4 SW 1/4 sec. 31, T. 40 N., R. 73 W., sixth principal meridian, embraced in lease

W-48869, and this well remains in a producing status. The NE 1/4 SW 1/4 sec. 31, T. 40 N., R. 73 W. was committed to the Powell Pressure Maintenance Unit effective September 1, 1983. By decision dated March 7, 1984, the lessee was advised that the nonunitized lands were segregated into lease W-87881. Because the parent lease W-48869 had been extended by production, BLM's decision provided, in accordance with section 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1982), and 43 CFR 3107.3-2:

[T]herefore, the non-unitized lease [W-87881] is extended for so long as oil or gas is produced in paying quantities under the unitized lease, or through September 1, 1985, if production ceases prior to that date on the unitized lease.

Thereafter, a portion of the land in lease W-87881 was committed to the Satori Unit effective July 31, 1985. The nonunitized lands were segregated into lease W-96448 and by decision dated September 27, 1985, Anadarko was advised that: "Lease W-96448 will continue in effect, unless relinquished, through July 31, 1987, and so long thereafter as oil or gas is produced in paying quantities." A typewritten notation on the page behind the decision in the case file contains the following analysis which was the apparent basis of the BLM decision: "W 87881 ext thru 9/1/85 and for so long thereafter as W 48869 is [held by production.] W 87881 segr by Satori Unit eff. 7/31/85 while still in definite term (9/1/85); therefore, W 96448 is not held for so long as W 48869 or W 87881." (Emphasis in original).

Anadarko argues that the September 27 decision "ignores the fact that the parent Lease is in its extended term by virtue of production and that, therefore the term of Lease W-96448 should be co-extensive with the term of

Lease W-87881, but not less than two years from the date of segregation." We agree with Anadarko and reverse BLM's decision.

[1] Section 17(j) of the Mineral Leasing Act provides that where a portion of the land in a lease is committed to a unit agreement, the lease "shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization." See 43 CFR 3107.3-2. In addition, the statute provides that "any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities." 30 U.S.C. § 226(j) (1982) (emphasis added); see 43 CFR 3107.3-2. Accordingly, the issue raised by this appeal is whether the term of lease W-87881 at the time of segregation was defined by the life of production or whether it was defined by the statutory minimum extension period generated by the prior segregation.

Appellant argues the statutory phrase "the term thereof" means the "term of the lease as it exists at the time of the segregation, whatever that 'term' may then be," citing Solicitor's Opinion, 63 I.D. 246 (1956), 1/ and that lease W-87881 was in its extended term by reason of production at such time, notwithstanding the fact the lease was entitled to a minimum

1/ The headnote to the Solicitor's opinion, entitled "Extension of the Portion of a Lease Outside of and Segregated as the Result of the Creation of a Unit Plan," explains that the term of the nonunitized lease shall be the "entire term of the lease or the period that the lease had to run, whether that period was definite or indefinite, as it existed on the date of the segregation." 63 I.D. at 246 (emphasis added).

statutory extension through September 1, 1985. Anadarko asserts this case is distinguishable from Conoco, Inc., 80 IBLA 161, 91 I.D. 181 (1984).

In Solicitor's Opinion, M-36543 (Jan. 23, 1959), at page 1, the Solicitor reaffirmed that the period of extension of the nonunitized portion of a lease, "whether that was a term of years or 'so long as oil or gas [is] produced from the lease,'" would be determined, at the time of segregation, by "whether [the lease] is * * * within a term of years or whether the length of its present term is to be measured by the life of production." In that case, the Solicitor concluded that the lease, at the time of segregation, was within an extended 5-year term and, thus, the extension of the nonunitized portion of the lease was for that fixed term, despite the fact the lease was producing and might be held by production at the expiration of the 5-year term. The Solicitor stated that the production "[did] not convert the fixed term into an indefinite 'so long as' term." Id. at 2; see Conoco, Inc., supra. However, if the lease was in its extended term by reason of production at the time of segregation by partial commitment to a unit agreement, then both the unitized lease and the segregated nonunitized lease would be subject to extension for the duration of production. Ann Guyer Lewis, 68 I.D. 180 (1961); Solicitor's Opinion, M-36592 (Jan. 21, 1960); see Solicitor's Opinion, 63 I.D. at 246.

It appears from the record that, at the time of partial commitment to the Satori unit and consequent segregation on July 31, 1985, lease W-87881 was held by production, i.e., in its extended term by reason of production in paying quantities. Although the lease would not terminate for cessation

of production prior to September 1, 1985, because the lease was entitled to an extension for 2 years from the date of the prior segregation, the fact remains that at the date of partial commitment to the Satori unit, W-87881 was extended by reason of production. In the absence of a cessation of production, the 2-year entitlement did not convert the lease to one with a fixed term. This case is, thus, distinguishable from Conoco, Inc., supra, where at the time of segregation by partial commitment to a unit the lease was in its 2-year extended term by reason of drilling over the lease termination date subject to further extension if production obtained as a result of drilling continued in paying quantities past the extended termination date of the lease. Thus, we held in Conoco:

Where production has been obtained on a lease which is in its primary or extended term (other than by reason of production) at the time of commitment of the nonproducing portion of the lease to the unit, the lease is still a lease for a term of years and not a lease for an indefinite term governed by the life of production at the time of segregation by partial commitment. Solicitor's Opinion, M-36592 (Jan. 21, 1960).

80 IBLA at 166, 91 I.D. at 183-84. Since lease W-87881 was in its extended term by reason of production at the time of segregation by partial commitment to the Satori unit, the term of the segregated nonunitized lease is properly considered to be for the life of such production but not less than 2 years from the date of segregation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is reversed and the case is remanded to BLM for further action consistent herewith.

C. Randall Grant, Jr.
Administrative Judge

We concur:
Will A. Irwin

Administrative Judge

R. W. Mullen

Administrative Judge

